

Chapter 8-18

NUISANCE PROPERTY ABATEMENT ORDINANCE

Sections:

8-18-01	DEFINITIONS
8-18-02	PROCEDURE
8-18-03	SUMMARY PROCEEDINGS
8-18-04	REMEDIES
8-18-05	ENFORCEMENT
8-18-06	SEVERABILITY

Section 8-18-01 DEFINITIONS

A. CHIEF OF POLICE

The Chief of Police shall refer to the Chief of the Boise City Police Department, or his/her designee.

B. CITY ATTORNEY

The City Attorney shall refer to the Boise City Attorney, or his/her designee.

C. NUISANCE ACTIVITIES

For the purposes of this Chapter, the phrase “nuisance activities” is defined as any of the following activities, behaviors or conduct:

1. The illegal manufacturing, producing, preparing, packaging, buying or selling of amphetamine, methamphetamine, heroin or cocaine in any form.
2. The illegal possession of materials or equipment used, or with the intent to be used, in the manufacture, production, preparation, or packaging of amphetamine and methamphetamine, heroin or cocaine.
3. Improper storage or disposal of hazardous materials, as defined in the Uniform Fire Code, as adopted by Boise City Code §7-01-02, which are used in the activities described in sections 8-18-01 C(1) & (2) above.
4. Violation of Idaho Code §18-2604 by intimidation of a witness who has reported nuisance activities, by a person residing on, or the owner of, property under investigation for nuisance activities.

D. NUISANCE PROPERTY

For the purposes of this Chapter, the phrase “nuisance property” is defined as real property, commonly used for human habitation, including all buildings and structures located upon said real property on which two or more nuisance activities have occurred during any one hundred and eighty (180) day period. Real property containing multiple dwelling units shall only be declared a "nuisance property" as it relates to the individual unit involved in the nuisance activity. However, should the same individual be involved in multiple instances of nuisance activities on the same real property, but in different units, each incident shall be counted toward a finding of a nuisance property. If the property owner/manager provides substantiated information that the individual is in the process of being evicted, subsequent activities performed by the individual to be evicted shall not be counted toward a finding of nuisance property. Further, if the property owner/manager is the reporting party leading to the discovery of the nuisance activities being conducted on the property, there shall be no finding of nuisance property based upon the reported incident.

E. PLAN OF ACTION

Boise Municipal Code

The plan of action shall be a detailed written response from the property owner describing the manner in which the property owner will, within their legal authority, make a good faith effort to prevent nuisance activities from continuing. The plan of action shall be filed with the Chief of Police within 15 (fifteen) working days from the date of the notice in 8-18-02 (B)(1). Instructions and educational materials regarding the preparation of the plan of action will be available at the office of the Chief of Police.

F. **POLICE REPORT**

For purposes of this ordinance, the term "police report" shall refer to information received by the Boise City Police Department which has been substantiated after an investigation.

G. **SECURE TASK FORCE**

The SECURE Task Force shall refer to a committee of individuals, including city staff members, appointed by, and serving at the pleasure of, the Mayor of the City of Boise. The SECURE Task Force shall also consist of at least two (2) individuals from a professional association or group including, but not limited to: IREM, Idaho Manufactured Housing Association, Idaho Rental Owners and Managers Association, National Association of Residential Property Managers, Ada County Association of Realtors, as well as a citizen from the private sector knowledgeable in hazardous materials and a citizen knowledgeable in landlord/tenant law.

(6025, Added, 12/19/2000)

Section 8-18-02PROCEDURE

A. Upon the receipt of a police report describing activities, that are nuisance activities on a property, the Chief of Police may begin formal proceedings. If formal proceedings are deemed appropriate, the proceedings shall be begun by:

1. Notifying the property owner; and the property manager, if known, that the property is in danger of being declared a nuisance property. The notice shall contain the following information:

- a. The street address or physical description sufficient to describe the property location.
- b. A statement that a nuisance activity has taken place on the property with a description of the events that have occurred on the property. The notification shall include educational material and referral information to assist in the abatement of the nuisance activity.

B. Upon the receipt of a second police report describing activities that are nuisance activities on the same property within a one hundred and eighty (180) day period, the Chief of Police will continue formal proceedings by:

1. Notifying the property owner; property manager, if known; and if known from official public records, the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located, that the property is in danger of being declared a nuisance property. Service of the notice upon the owner shall be by delivering a copy of the notice to the individual personally or by leaving a copy thereof at the individual's dwelling house or usual place of abode with some person over the age of eighteen (18) years then residing therein or by delivering a copy of the notice to an agent authorized by appointment or by law to receive service of process. Where reasonable efforts to effect personal service have been unsuccessful, service shall be by registered or certified mail to the last known address of the person to be notified and if no returned receipt, by publication once a week for three (3) successive weeks in a newspaper or newspapers most likely to give notice to the person to be served. The notice shall contain the following

Boise Municipal Code

information:

- a. The street address or physical description sufficient to describe the property location.
- b. A statement that the property is being considered for declaration as nuisance property with a description of the events that have occurred on the property.
- c. A requirement that the property owner provide a plan of action, approved by the Chief of Police, to abate the nuisance activities.

C. The Chief of Police shall begin abatement proceedings if no written response is received from the property owner within fifteen (15) working days from the date of service or receipt of the notice, or the plan of action agreed upon between the property owner and the Chief of Police has not been completed within a thirty (30) working day period following the agreement and any applicable extensions.

a. If the Chief of Police and the property owner, or property manager, are unable to reach an agreement on an appropriate plan of action, the Chief of Police shall mail, by certified mail, return receipt requested, to the property owner and property manager, if any, the requirements which must be satisfied to prevent the property from being declared nuisance property. Any property owner, or property manager, aggrieved by any decision rendered by the Chief of Police pursuant to this Chapter may appeal such decision to the City Council. Such appeal shall be in writing, describing the decision and the grounds for the appeal, and shall be filed with the City Clerk within ten (10) days after the receipt of the requirements from the Chief of Police. The matter shall be heard before the City Council within 30 days of the filing of the appeal. No fee shall be assessed for the filing of this appeal. The City Council shall have the power to approve, revise or amend the decision of the Chief of Police and the decision of the City Council shall be final.

b. The Chief of Police shall refer the matter to the SECURE task force. The SECURE task force shall not refer the matter to the City Attorney if the owner is cooperating with the Chief of Police and the SECURE task force. If the SECURE task force agrees that forced abatement is appropriate, it shall refer the matter to the City Attorney for consideration of proceeding with the abatement of the nuisance property.

D. Unless otherwise specified, all notifications shall be made by certified mail return receipt requested at the last known address as listed on the tax rolls of Ada County, State of Idaho, or for corporate entities, the registered agent as listed with the Secretary of State.

E. Statements made by the owner in providing a plan of action to abate the nuisance activities shall not constitute an admission that any nuisance activities have occurred or are occurring. This subsection does not require the exclusion of any other evidence which may otherwise be admissible or offered for any other purpose.

(6025, Added, 12/19/2000)

Section 8-18-03SUMMARY PROCEEDINGS

If evidence exists to substantiate the belief that nuisance activities exist or have occurred on the property such that emergency action is necessary to avoid an immediate threat to public welfare and safety, the Chief of Police may immediately notify the City Attorney and request that summary proceedings begin to secure immediately a closure of the premises. Summary proceedings to obtain an immediate closure of the property shall be pursuant to Rule 65(b) of the Rules of Civil Procedure for the issuance of a temporary restraining order. The use of summary proceedings does not preclude the exercise of other emergency procedures.

Boise Municipal Code

(6025, Added, 12/19/2000)

Section 8-18-04REMEDIES

A. The SECURE task force may request the City Attorney to commence legal proceedings in the District Court to abate the nuisance activity and/or to seek closure of the property, the imposition of civil penalties against the property owner, and any other remedies allowed by law, including costs and attorney fees.

B. If the Court finds by a preponderance of the evidence that the property is Nuisance Property, the Court may order the Property to be closed and secured against all unauthorized access, use and occupancy for a period of time which the Court deems appropriate in its discretion. The order shall be part of the final judgment with the court retaining jurisdiction over the matter during the period of closure.

C. If the Court finds by a preponderance of the evidence that the property is Nuisance Property, the Court may order a civil penalty of the costs incurred by the City to abate the Nuisance Activities. The civil penalty shall be assessed against the property owner and shall be included in the civil judgment entered against the property owner.

D. If the Court finds that the property owner could not at all material times have determined that the property had become Nuisance Property after exercising reasonable care and diligence, the Court shall not award civil penalties against the property owner, nor order closure of the property.

(6025, Added, 12/19/2000)

Section 8-18-05ENFORCEMENT

In the event the property owner fails to physically secure the property against all unauthorized access, the Court may authorize the City to physically secure the property. In the event that the City is authorized to secure the property, the City shall recover from the property owner all costs reasonably incurred by the City to physically secure and maintain the security of the property.

(6025, Added, 12/19/2000)

Section 8-18-06SEVERABILITY

The provisions of this Chapter are severable, and if any sentence, section or other part of this Chapter should be found to be invalid, such invalidity shall not affect the remaining provisions, and the remaining provisions shall continue in full force and effect.

(6025, Added, 12/19/2000)